



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 10-61214-CIV-SEITZ

TIFFANY (NJ), LLC,

Plaintiff,

vs.

LIU DONGPING  
and DOES 1-10,

Defendants. /

**FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

THIS MATTER having come before the Court upon motion by Plaintiff Tiffany (NJ), LLC, ("Tiffany" or "Plaintiff") for entry of final default judgment of its claims against Defendant Liu Dongping ("Defendant") pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, and the Court having granted Plaintiff's Motion for Entry of Final Default Judgment;

IT IS HEREBY ORDERED that judgment is entered in favor of Plaintiff, Tiffany (NJ), LLC, a Delaware limited liability company, with its principal place of business in the United States located at 15 Sylvan Way, Parsippany, New Jersey 07054 and against Defendant on all Counts of the Complaint as follows:

(1) Permanent Injunctive Relief:

Defendant and his respective officers, agents, servants, employees, and attorneys, and all persons acting in concert and participation with him are hereby permanently restrained and enjoined from:

- (a) manufacturing or causing to be manufactured, importing, advertising, or promoting, distributing, selling or offering to sell counterfeit and infringing goods using the Tiffany Marks and/or works protected by the Tiffany Copyrights identified in paragraph 9 of the Complaint;

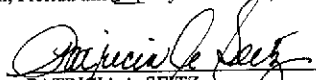
United States based Registrar of Plaintiff's choosing, and that Registrar shall transfer the Subject Domain Names to Plaintiff; and

- (b) Upon Plaintiff's request, the top level domain (TLD) Registry for each of the Subject Domain Names, within thirty (30) days of receipt of this Order, shall place the Subject Domain Names on Registry Hold status for the life of the current registration, thus removing them from the TLD zone files maintained by the Registry which link the Subject Domain Names to the IP addresses where the associated websites are hosted.

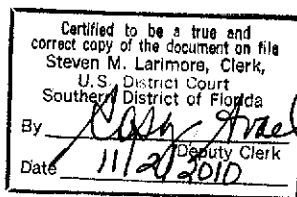
- (3) Statutory damages pursuant to 15 U.S.C. § 1117(c): \$513,000.00  
(4) Statutory damages pursuant to 15 U.S.C. § 1117(d): \$80,000.00  
(5) Statutory Damages pursuant to 17 U.S.C. § 504: \$180,000.00  
(6) Costs of Suit: \$700.00  
(7) Interest from the date this action was filed shall accrue at the legal rate.  
(8) The bond posted by Tiffany in the amount of \$10,000.00 is ordered to be released

by the Clerk

DONE AND ORDERED in Miami, Florida this 29<sup>th</sup> day of October, 2010.

  
PATRICIA A. SPITZ  
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record



**SCHEDULE "A"**  
**SUBJECT DOMAIN NAMES**

aheadtrade.com  
besttiffany.com  
joytiffany.com  
kissbrand.com  
linksfromlondon.com  
myetiffany.com  
silverheight.com  
silversilvers.com  
sliveronline.com  
tiffany4sale.org  
tiffanybetter.com  
tiffanyjewellerybuy.com  
tiffanylike.com  
tiffanywooer.com  
tobling.com  
toobling.com  
toopeshop.com  
victoriaclassic.com

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 10-61214-CIV-SEITZ

TIFFANY (NJ), LLC,

Plaintiff,

vs.

LIU DONGPING  
and DOES 1-10,

Defendants. /

**ORDER GRANTING PLAINTIFF'S MOTION FOR  
FINAL DEFAULT JUDGMENT AND CLOSING CASE**





THIS CAUSE is before the Court on Plaintiff's Motion for Entry of Final Default Judgment. Plaintiff, Tiffany (NJ), LLC, moves for final default judgment against Defendant Liu Dongping d/b/a the domain names identified on the attached Schedule "A" (the "Subject Domain Names") for alleged violations of the Lanham Act, codified at 15 U.S.C. §§ 1114, 1125(a), and 1125(d), and the Copyright Act, codified at 17 U.S.C. §501. As Defendant has failed to appear, plead or otherwise defend this action, and given the documentary evidence submitted in support of its motion, the Court shall grant Plaintiff's Motion for Final Default Judgment.

**I. Factual and Procedural Background**

Tiffany (NJ), LLC ("Tiffany") is a Delaware limited liability company, with its principal place of business in the United States located at 15 Sylvan Way, Parsippany, NJ 07054. (Compl. ¶ 2.) Tiffany is engaged in the manufacture, promotion, and distribution of high quality products, which have been sold throughout the United States. (Declaration of Steven Costello in Support of Plaintiff's *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction and Order Authorizing Alternate Service of Process on Defendant ("Costello Decl. in

Support of Plaintiff's *Ex Parte* App.") ¶¶ 5-6 [DE 6-2].) Tiffany is, and at all times relevant hereto has been, the owner and/or exclusive licensee of all rights in and to the following nineteen

Federally registered trademarks:

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
TIFFANY & CO.	0,023,573	September 5, 1893
TIFFANY	0,133,063	July 6, 1920
TIFFANY & CO.	1,228,189	February 22, 1983
TIFFANY	1,228,409	February 22, 1983
TIFFANY & CO.	1,283,306	June 26, 1984
<i>Return Route</i>	1,460,510	October 13, 1987
ATLAS	1,605,467	July 10, 1990
T & CO.	1,669,365	December 24, 1991
PERETTI	1,787,861	August 17, 1993
ELSA PERETTI	1,799,272	October 19, 1993
	1,785,204	August 3, 1993
	1,804,353	November 16, 1993
<i>Return Route</i>	1,807,381	November 30, 1993
TIFFANY & CO.	1,968,614	April 16, 1996
	2,184,128	August 25, 1998
	2,359,351	June 20, 2000

TIFFANY	2,639,539	October 22, 2002
STREAMERICA	2,677,403	January 21, 2003
ATLAS	2,886,655	September 21, 2004

which are registered in International Class 14, and are used in connection with the manufacture and distribution of, among other things, high quality jewelry such as bracelets, necklaces, pendants, earrings and rings, watches, cufflinks, money clips, and key rings (the "Tiffany Marks"). (Costello Decl. in Support of Plaintiff's *Ex Parte* App. ¶ 4 and Composite Exhibit 1 attached thereto.) Additionally, Tiffany is the owner and/or exclusive licensee of all rights in and to the following six United States Copyright Registrations:

<u>Copyright Title</u>	<u>Registration Number</u>	<u>Registration Date</u>
"Star" Earrings and Pendant	VA 156-781	March 16, 1984
Paloma's Kiss Earrings	VAu 127-656	March 15, 1988
Apple pendants	VA 515-041	June 8, 1992
Loving heart ring	VA 519-157	August 3, 1992
Large P-P heart pendant	VA 596-557	August 3, 1992
Double Loving Heart	VA 1-189-959	July 16, 2002

for works in which Tiffany's copyrighted designs appear (the "Tiffany Copyrights"). (Costello Decl. in Support of Plaintiff's *Ex Parte* App. ¶ 4 and Composite Exhibit 2 attached thereto.)

Defendant has advertised, offered for sale, and/or sold jewelry, including bracelets, necklaces, pendants, earrings and rings, watches, cufflinks, money clips, and key rings, bearing counterfeits, reproductions, and/or colorable imitations of the Tiffany Marks and the works protected by the Tiffany Copyrights. (Costello Decl. in Support of Plaintiff's *Ex Parte* App. ¶¶ 9-14; Declaration of Jason Holmes in Support of Plaintiff's *Ex Parte* Application for Entry of

Temporary Restraining Order and Preliminary Injunction and Order Authorizing Alternate Service of Process on Defendant ("Holmes Decl. in Support of Plaintiff's *Ex Parte* App.") ¶¶ 4-7 [DE 6-5]; and relevant web pages from Defendant's Internet websites operating under the Subject Domain Names ("Defendant's Websites") attached as Composite Exhibit 1 to the Declaration of Stephen M. Gaffigan in Support of Plaintiff's *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction and Order Authorizing Alternate Service of Process on Defendant ("Gaffigan Decl. in Support of Plaintiff's *Ex Parte* App.") [DE 6-3 and DE 6-4].) Defendant is not now, nor has he ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, and/or colorable imitations of the Tiffany Marks or the works protected by the Tiffany Copyrights. (Costello Decl. in Support of Plaintiff's *Ex Parte* App. ¶ 9.)

Plaintiff retained Jason Holmes ("Holmes") of IPCybercrime.com, LLC, to investigate suspected sales of counterfeit Tiffany branded products by Defendant. (Costello Decl. in Support of Plaintiff's *Ex Parte* App. ¶ 10; Holmes Decl. in Support of Plaintiff's *Ex Parte* App. ¶ 3.) In May 2010, Holmes accessed the Internet website operating under the domain name tobbling.com, and placed an order for the purchase of a Tiffany branded Heart Tag key ring. (Holmes Decl. in Support of Plaintiff's *Ex Parte* App. ¶ 4 and Composite Exhibit 1 attached thereto.) Holmes' purchase was processed entirely online, which included providing shipping and billing information, payment, and confirmation of his order. (Holmes Decl. in Support of Plaintiff's *Ex Parte* App. ¶¶ 4-6 and Composite Exhibits 1-3 attached thereto.) Holmes was able to communicate only electronically in connection with his purchase of the Tiffany branded Heart Tag key ring from the tobbling.com website. (Holmes Decl. in Support of Plaintiff's *Ex Parte* App. ¶¶ 5-6.) Specifically, Holmes exchanged e-mail communication with Defendant via his



this action. (*See* DE 27.) To date, Defendant has not sought to vacate the default or otherwise appear and defend this action. On October 19, 2010, Plaintiff filed and served the instant motion for entry of final default judgment, to which Defendant has also failed to respond.

## **II. LEGAL STANDARD**

Federal Rule of Civil Procedure 55(b)(2) authorizes a court to enter a default judgment against a properly served defendant, who, like Defendant here, failed to file a timely responsive pleading. By such a default, all of Plaintiff's well-pled allegations in the Complaint are deemed admitted. *See Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987); *Petmed Express, Inc. v. Medpots.com*, 336 F. Supp. 2d 1213, 1217 (S.D. Fla. 2004). If the admitted facts in the Complaint establish liability, then the Court must determine appropriate damages. Where all the essential evidence is on record, an evidentiary hearing on damages is not required. *See SEC v. Smyth*, 420 F.3d 1225, 1232 n. 13 (11th Cir. 2005) ("Rule 55(b)(2) speaks of evidentiary hearings in a permissive tone . . . We have held that no such hearing is required where all essential evidence is already of record.") (citations omitted); *see also Petmed Express*, 336 F. Supp. 2d at 1223 (entering default judgment, permanent injunction and statutory damages in a Lanham Act case without a hearing). In this case, a hearing on damages is unnecessary as Plaintiff seeks statutory damages and has submitted detailed declarations with accompanying documentary evidence in support of its damages request.

## **III. LIABILITY**

### **A. Trademark Infringement**

The allegations in Plaintiff's Complaint, in conjunction with record evidence, support a finding of liability against Defendant for trademark infringement. "[T]o prevail on a trademark infringement claim a plaintiff must demonstrate that (1) its mark has priority; (2) defendant used

*S.A. v. Vacation Tours, Inc.*, 203 Fed. App'x 252, 256, 2006 WL 2847233, \*3 (11th Cir. 2006).

In this case, the well-pled allegations demonstrate Plaintiff's Marks are distinctive and famous, that the infringing domain names are confusingly similar, and that Defendant registered the domain names with the bad-faith intent to profit from them. As such, Defendant is liable for cyberspiracy under 15 U.S.C. § 1125(d).

#### **D. Copyright Infringement**

To prevail on its claim of copyright infringement, Plaintiff must show: (1) that it owns valid copyrights in the designs in question; and (2) that Defendant copied original elements of the copyrighted materials. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).<sup>1</sup> Here, Plaintiff has shown that it owns valid copyrighted materials (Compl. ¶ 9; Costello Decl. in Support of Plaintiff's Ex Parte App. ¶ 4 and Composite Exhibit 2 attached thereto), and that Defendant's websites offered for sale designs that were "exact duplicates" of the designs protected by Plaintiff's six copyrights. (Costello Decl. in Support of Plaintiff's Ex Parte App. ¶ 14.) Being unopposed, this is sufficient to establish liability for copyright infringement.

#### **IV. INJUNCTIVE RELIEF**

Plaintiff is entitled to the requested injunctive relief pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 502. A plaintiff seeking a permanent injunction must demonstrate that (1) it has suffered an irreparable injury; (2) remedies at law, such as monetary damages, are inadequate to

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<sup>1</sup> Even if the copying is not done by Defendant himself, copyright liability can be established under theories of vicarious or contributory infringement. To establish a prima facie case of vicarious infringement, a plaintiff must establish: (1) that defendant profited from a direct infringement; and (2) that defendant had the right to stop or limit the infringement but did not. *MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005); see also *Playboy Enterprises, Inc. v. Starware Publishing Corp.*, 900 F. Supp. 438, 440-41 (S.D. Fla. 1995). And to establish a prima facie case of contributory infringement, a plaintiff must establish: (1) direct infringement; (2) that defendant had knowledge of the direct infringement; and (3) that defendant intentionally induced, encouraged or materially contributed to the direct infringement. See *Grokster*, 545 U.S. at 930; *Castar Group, Inc. v. Loopnet Inc.*, 373 F.3d 544, 550 (4th Cir. 2004).

domain names violating the provisions of 15 U.S.C. 1125(d)(1) for a total award of \$80,000.00. Defendant has registered the domain names at issue in bad faith in violation of 15 U.S.C. § 1125(d). (Complaint ¶ 44.) In view of Defendant's intentional, wrongful conduct, the Court finds that Plaintiff's request is reasonable. *See Taverna Opa Trademark Corp. v. Ismail*, Case No. 08-20776-CIV, 2010 WL 1838384, at \*3 (S.D. Fla. May 6, 2010) (awarding \$10,000.00 in statutory damages for domain name at issue). Thus, the Court shall award Plaintiff \$80,000.00 in statutory damages pursuant to 15 U.S.C. § 1117(d).

**C. Statutory Damages for Copyright Infringement**

Statutory damages for copyright infringement are to be (1) not less than \$750.00 or no more than \$30,000.00 with respect to any one work, as the Court considers just; or (2) if the Court finds the infringement willful, not more than \$150,000.00. *See* 17 U.S.C. § 504(c). The Court possesses wide discretion in determining the amount of statutory damages within the given statutory range. *See Sara Lee Corp. v. Bags of New York, Inc.*, 36 F. Supp. 2d 161, 166 (S.D.N.Y. 1999).

In this case, Plaintiff is entitled to a statutory damage award of \$30,000.00 for each of the six copyrights violated. Thus the Court shall award \$180,000.00 in statutory damages pursuant to 17 U.S.C. § 504.

**VL COSTS**

Both the Lanham Act and the Copyright Act authorize the award of costs. Plaintiff requests costs totaling \$700.00 resulting from filing the Complaint and process server fees. The Court shall award \$700.00 in costs, finding this to be a reasonable amount.

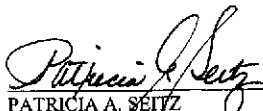
**VII. CONCLUSION**

For the reasons stated above, it is hereby

ORDERED THAT:

1. Plaintiff's Motion for Entry of Final Default Judgment is GRANTED.
2. Final Default Judgment in favor of Plaintiff Tiffany (NJ), LLC shall be ENTERED against Defendant Liu Dongping, with a separate Final Judgment.
3. This case is CLOSED.

DONE AND ORDERED in Miami, Florida, this 29<sup>th</sup> day of October, 2010.

  
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PATRICIA A. SEITZ  
United States District Judge

cc: All Counsel of Record

